

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant: Timothy K. Searfoss

Title: Trailer Cover System

App. No.: 10/664,806 Filed: 09/17/2003

Examiner: GUTMAN, Hilary L. Group Art Unit: 3612

Atty. Dkt. No.: 3000-0022 Confirmation No.: 3469

M/S APPEAL

The Board of Patent Appeal and Interferences
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

BRIEF IN SUPPORT OF APPEAL
CORRECTED APPEAL BRIEF

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This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. § 41.37(c)(1)):

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I. REAL PARTY IN INTEREST (37 C.F.R. § 41.37(c)(1)(ii))

The real party in interest in this appeal is Roll-Rite LLC, (formerly known as Roll Rite Corporation), the assignee, as evidenced by the assignment recorded at Reel 015386, Frame 0484.

II. RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 41.37(c)(1)(ii))

There are no interferences or other appeals that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS (37 C.F.R. § 41.37(c)(1)(iii))

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

There are thirty-three (33) claims in the application (claims 1-33).

B. STATUS OF ALL THE CLAIMS

1. Claims pending:

Claims 1-33.

2. Claims withdrawn from consideration but not canceled:

NONE.

3. Claims allowed:

NONE.

4. Claims objected to:

NONE.

5. Claims rejected:

Claims 1-5, 7-8, and 11 are rejected under 35 U.S.C. § 102(e).

Claims 1 and 6 are rejected under 35 U.S.C. § 103(a).

Claims 12-16, 18-19, 22-27, 29-30, and 33 are rejected under 35 U.S.C. § 103(a).

Claims 12, 17, 23, and 28 are rejected under 35 U.S.C. § 103(a).

Claims 9 and 10 are rejected under 35 U.S.C. § 103(a).

Claims 20-21 and 31-32 are rejected under 35 U.S.C. § 103(a).

6. Claims canceled:

NONE

C. CLAIMS ON APPEAL

There are thirty-three (33) claims on appeal, claims 1-33.

IV. STATUS OF AMENDMENTS (37 C.F.R. § 41.37(c)(1)(iv))

No amendments have been submitted subsequent to the Office Action mailed January 10, 2006.

(CORRECTED SECTION)

**V. CONCISE EXPLANATION OF THE SUBJECT MATTER DEFINED IN EACH
OF THE INDEPENDENT CLAIMS INVOLVED IN THE APPEAL**

Independent Claim 1 recites a rail for a top of a wall of a trailer, the rail comprising a body adapted to engage the top of the wall, the body having a concave surface adapted to receive a cover reel. In the embodiment shown in FIG. 3, the rail 38 engages the top of the wall 34 (Page 4, line 30 through page 5, line 2) and the concave surface 56 receives the cover reel 32 (Page 5, lines 12-13).

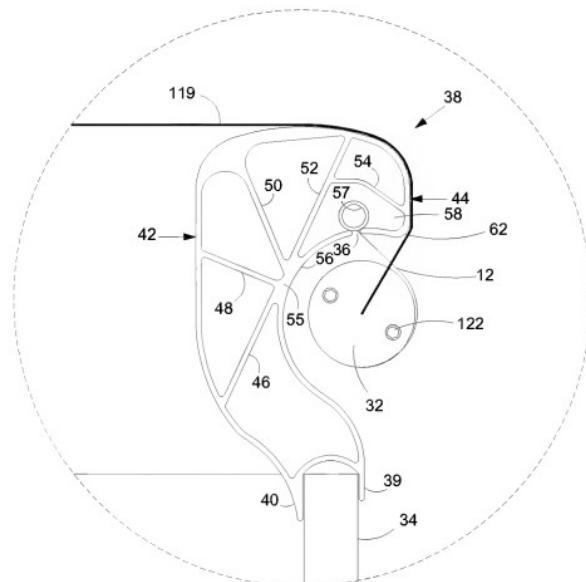


FIG. 3

Independent Claim 12 recites an apparatus for extending and retracting a cover over a trailer. The apparatus comprises a base pivotably connected to the trailer, an extension connected to the cover and pivotably connected to the base, and a rail for a top of a wall of the trailer. The rail includes a body adapted to engage the top of the wall, the body having a concave surface adapted to receive a cover reel.

Independent Claim 23 recites an apparatus for extending and retracting a cover over a trailer. The apparatus comprises a base pivotably connected to the trailer, an extension connected to the cover and pivotably connected to the base, and a reel connected to the extension. A motor mounted on the extension drivingly engages the reel to selectively extend and retract the cover over the trailer. A rail for a top of a wall of the trailer includes a body adapted to engage the top of the wall, the body having a concave surface adapted to receive the reel.

In the embodiment shown in FIG. 1, the base 14 is pivotably connected to the trailer 13, and the extension 18 is connected to the cover 12 and pivotably connected to the base 14 (Page 3, lines 19-21; page 4, lines 5-6). The rail 38 engages the top of the wall 34 (Page 4, line 30 through page 5, line 2) and the concave surface 56 receives the cover reel 32 (Page 5, lines 12-13). The motor 30 is mounted on the extension 18 (Page 4, lines 23-25).

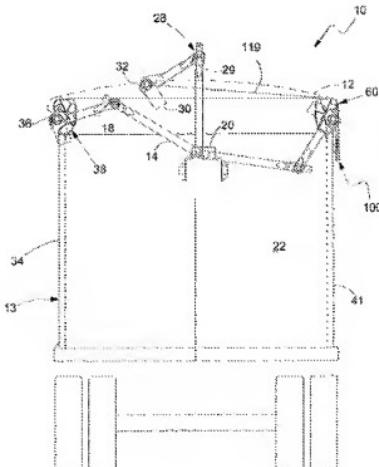


FIG. 1

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
(37 C.F.R. § 41.37(c)(1)(vi))

A. Independent claims 1, 12 and 23 were rejected either alone (claim 1) or in combination with a secondary reference (claims 12 and 23) under §102(c) over U.S. Patent No. 6,513,856 to Swanson et al. (Appendix B).

B. Claim 1 was also rejected under §103(a) over U.S. Patent No. 4,505,512 to Schmeichel et al. (Appendix C) in view of DE 101 20 442.

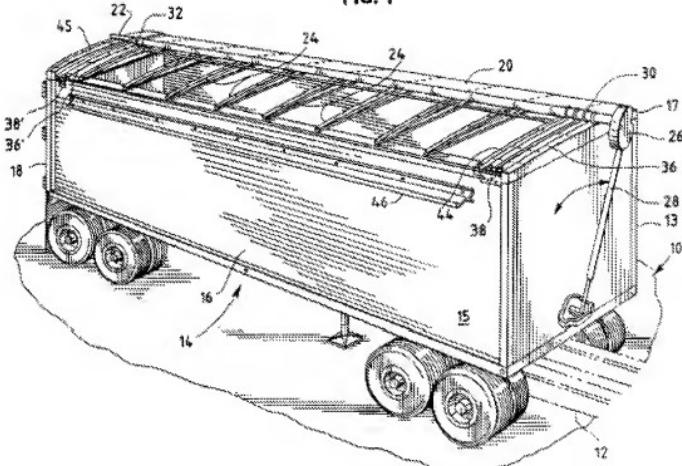
VII. ARGUMENTS (37 C.F.R. § 41.37(c)(1)(vii))

Based on the arguments and issues below, the claims do not stand or fall together, each of the independent claims has a unique set of issues relating to its rejection and appeal:

A. Swanson's Ledge Engages The Side of the Trailer, Not the Top

The Examiner maintains that a ledge 46 of Swanson et al. '856 "as broadly recited and interpreted is [] attached at the top of the trailer." *Office Action mailed Jan. 10, 2006 at page 7.*

FIG. 1

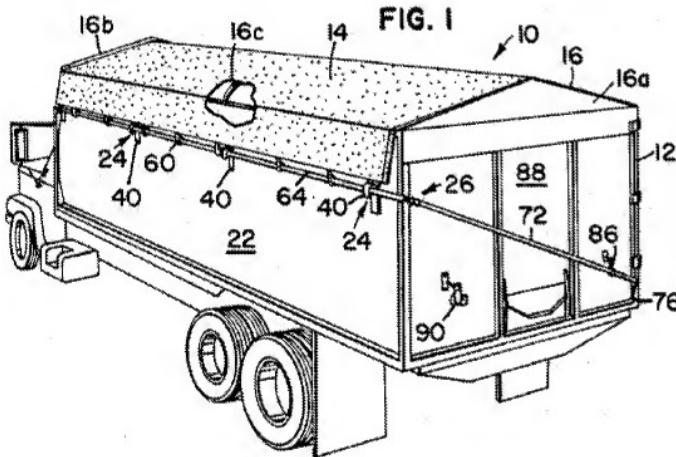


The first issue in this appeal is whether the ledge 46 of Swanson et al. '856 engages the top of the wall.

The ledge 46 of Swanson et al. '856 is plainly situated some distance from the top of the wall. See Figures 1 and 6. The specification does not suggest anything else: "[L]ongitudinal latch plate or ledge 46 [is] attached on side 15 near second lengthwise edge 19 of the container 16." Swanson et al. '856 (Appendix B) at column 5, lines 63-65.

B. Schmeichel et al.'s Hooks Engage The Side of the Trailer, Not the Top

In a rejection made for the first time, the Examiner asserts without detail that Schmeichel et al. '512 "disclose the claimed invention [of claim 1] except for a plurality of ribs." *Office Action mailed Jan. 10, 2006 at pages 3-4.* This reference is apparently to hooks 40:



The second issue in this appeal is whether the hooks 40 of Schmeichel et al. '512 engage the top of the wall.

As in Swanson et al. '856, the hooks 40 of Schmeichel et al. '512 are situated well below the top of the wall: "hooks 40 [are] attached at spaced intervals to the side 22 opposite the side 18 of the truck box 12 ... The hooks 40 are suitably secured to the truck box side wall 22 below the top edge thereof." Schmeichel et al. '512 (Appendix C) at column 4, lines 24-33.

VIII. APPENDIX OF CLAIMS INVOLVED IN THE APPEAL (37 C.F.R. § 41.37(e)(1)(viii))

The text of each claim involved in the appeal is as follows:

1. (Original) A rail for a top of a wall of a trailer, the rail comprising:
a body adapted to engage the top of the wall, the body having a concave surface
adapted to receive a cover reel.
2. (Original) The rail of claim 1 wherein the concave surface faces away from the trailer.
3. (Original) The rail of claim 1 further comprising at least one leg connected to the body.
4. (Original) The rail of claim 3 wherein the at least one leg is adapted to engage the top of the wall.
5. (Original) The rail of claim 3 wherein the at least one leg is adapted to be welded to the top of the wall.
6. (Original) The rail of claim 1 wherein the body comprises a plurality of ribs.
7. (Original) The rail of claim 1 wherein the body includes an opening adapted to anchor a cover.
8. (Original) The rail of claim 1 wherein the body extends at least a majority of a length of the wall of the trailer.
9. (Original) The rail of claim 1 wherein the body comprises aluminum.
10. (Original) The rail of claim 1 wherein the body comprises a polymer.

11. (Original) The rail of claim 1 wherein the body is extruded.
12. (Original) An apparatus for extending and retracting a cover over a trailer, the apparatus comprising:
 - a base pivotably connected to the trailer;
 - an extension connected to the cover and pivotably connected to the base; and
 - a rail for a top of a wall of the trailer, the rail including a body adapted to engage the top of the wall, the body having a concave surface adapted to receive a cover reel.
13. (Original) The apparatus of claim 12 wherein the concave surface faces away from the trailer.
14. (Original) The apparatus of claim 12 further comprising at least one leg connected to the body.
15. (Original) The apparatus of claim 14 wherein the at least one leg is adapted to engage the top of the wall.
16. (Original) The apparatus of claim 14 wherein the at least one leg is adapted to be welded to the top of the wall.
17. (Original) The apparatus of claim 12 wherein the body comprises a plurality of ribs.
18. (Original) The apparatus of claim 12 wherein the body includes an opening adapted to anchor the cover.
19. (Original) The apparatus of claim 12 wherein the body extends at least a majority of a length of the wall of the trailer.
20. (Original) The apparatus of claim 12 wherein the body comprises aluminum.

21. (Original) The apparatus of claim 12 wherein the body comprises a polymer.
22. (Original) The apparatus of claim 12 wherein the body is extruded.
23. (Original) An apparatus for extending and retracting a cover over a trailer, the apparatus comprising:
 - a base pivotably connected to the trailer;
 - an extension connected to the cover and pivotably connected to the base;
 - a reel connected to the extension;
 - a motor mounted on the extension and drivingly engaged with the reel to selectively extend and retract the cover over the trailer; and
 - a rail for a top of a wall of the trailer, the rail including a body adapted to engage the top of the wall, the body having a concave surface adapted to receive the reel.
24. (Original) The apparatus of claim 23 wherein the concave surface faces away from the trailer.
25. (Original) The apparatus of claim 23 further comprising at least one leg connected to the body.
26. (Original) The apparatus of claim 25 wherein the at least one leg is adapted to engage the top of the wall.
27. (Original) The apparatus of claim 25 wherein the at least one leg is adapted to be welded to the top of the wall.
28. (Original) The apparatus of claim 23 wherein the body comprises a plurality of ribs.
29. (Original) The apparatus of claim 23 wherein the body includes an opening adapted to anchor the cover.

30. (Original) The apparatus of claim 23 wherein the body extends at least a majority of a length of the wall of the trailer.
31. (Original) The apparatus of claim 23 wherein the body comprises aluminum.
32. (Original) The apparatus of claim 23 wherein the body comprises a polymer.
33. (Original) The apparatus of claim 23 wherein the body is extruded.

IX. EVIDENCE APPENDIX (37 C.F.R. § 41.37(c)(1)(ix))

Appellant entered no evidence pursuant to §1.130, 1.131 or 1.132, and the Examiner entered no evidence that was relied upon by Appellant.

X. RELATED PROCEEDINGS APPENDIX (37 C.F.R. § 41.37(c)(1)(x))

There are no decisions rendered by a court or interferences or other appeals that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal.

XI. CONCLUSION

The Examiner maintains that the references show something that they plainly do not. The final rejection of claims 1-33 should be reversed. For at least the reasons given above, all pending claims are allowable and the Appellant therefore respectfully request reconsideration and allowance of all claims and that this patent application be passed to issue.

Respectfully submitted,

Date /11 January 2008/ _____ /timothy g newman/
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